

OMAHA NATIONAL BANK *v.* NEBRASKANS FOR
INDEPENDENT BANKING, INC., ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 75-1382. Decided June 7, 1976

Court of Appeals' judgment that petitioner national bank's drive-in/walk-in facility was a branch petitioner was not permitted to operate because a state bank would not be permitted to operate a like facility is vacated, and the case is remanded for reconsideration in light of an intervening amendment to the statute redefining the "auxiliary teller" facilities that state banks may operate.

Certiorari granted; 530 F. 2d 755, vacated and remanded.

PER CURIAM.

From the time petitioner Omaha National Bank sought approval from the Regional Administrator of National Banks of its drive-in/walk-in facility until after the en banc decision of the Court of Appeals, Nebraska law permitted a state-chartered bank to operate one "attached auxiliary teller office" and not more than two "detached auxiliary teller offices." Neb. Rev. Stat. § 8-157 (2) (1974). The two types of "auxiliary teller offices" were defined in Nebraska Department of Banking Reg. § 8-157-01 (1970). The Court of Appeals found it "abundantly clear" that a state bank situated like Omaha National would not be permitted to operate the added facility, and ruled that under 12 U. S. C. § 36, see *First Nat. Bank v. Dickinson*, 396 U. S. 122, 135 (1969), the facility was a branch which the bank was not permitted to operate. 530 F. 2d 755, 762 (CA8 1976).

Since the en banc decision, § 8-157 (2) has been amended by Legislative Bill 763, approved by the Governor on March 11, 1976, to redefine "auxiliary teller" facilities which state banks may operate. It appearing

that this amendment, which will become effective in July 1976, may have a substantial bearing on the outcome of this case, the petition for certiorari is granted, the judgment of the Court of Appeals is vacated, and the case is remanded to the Court of Appeals for reconsideration in light of Legislative Bill 763.

So ordered.